





1 U.S. 81, 84 (2006). Exhaustion is a prerequisite to all prisoner lawsuits concerning  
2 prison life, whether such actions involve general conditions or particular episodes,  
3 whether they allege excessive force or some other wrong, and even if they seek  
4 relief not available in grievance proceedings, such as money damages. Porter v.  
5 Nussle, 534 U.S. 516, 524 (2002). All available remedies must be exhausted; those  
6 remedies “need not meet federal standards, nor must they be ‘plain, speedy, and  
7 effective.’” Id. (citation omitted). Even when the prisoner seeks relief not available  
8 in grievance proceedings, notably money damages, exhaustion is a prerequisite to  
9 suit. Id.; Booth v. Churner, 532 U.S. 731, 741 (2001). Prisoners cannot avoid the  
10 administrative exhaustion requirement by requesting relief not available in the  
11 appeals system, such as monetary relief, or by simply declaring the process futile.  
12 The exhaustion requirement requires “proper exhaustion” of all available  
13 administrative remedies. Ngo, 548 U.S. at 93. Because exhaustion under §  
14 1997e(a) is an affirmative defense, a complaint may be dismissed for failure to  
15 exhaust only if failure to exhaust is obvious from the face of the complaint and/or  
16 any attached exhibits. Wyatt v. Terhune, 315 F.3d 1108, 1119-20 (9th Cir. 2003).  
17 The Court may dismiss a complaint for failure to exhaust where the prisoner  
18 “conce[des] to nonexhaustion” and “no exception to exhaustion applies.” Id. at  
19 1120.

20 A federal prisoner must exhaust his administrative remedies with the BOP  
21 before filing a Bivens claim in federal court. See 42 U.S.C. § 1997e(a); Lunsford v.  
22 Jumao-As, 155 F.3d 1178, 1179 (9th Cir. 1998), overruled on other grounds by  
23 Booth v. Churner, 532 U.S. 731 (2001); Garrett v. Hawk, 127 F.3d 1263, 1265 (10th  
24 Cir. 1997), overruled on other grounds by Booth v. Churner, 532 U.S. 731 (2001).  
25 A federal prisoner may seek formal review of an issue that relates to any aspect of  
26 his imprisonment under 28 C.F.R. § 542.10. The procedure requires that the  
27 prisoner first address his complaint to the institution staff. See 28 C.F.R. §  
28 542.14(c)(4) (1997), Form BP-9. If dissatisfied with the response at that level, the

1 inmate may appeal his complaint to the regional Director of the Bureau of Prisons  
2 ("BOP"). See id. § 542.15(a), Form BP-10. Finally, the prisoner may appeal his  
3 case to the General Counsel in the Central Office of the BOP, which is the "final  
4 administrative appeal." See id., Form BP-11.

5 Here, Plaintiff indicated on the complaint that the last level to which she  
6 appealed was not the highest level of appeal available to her. (Compl. at 2.)  
7 Plaintiff asserts that she was never given the forms although she requested them on  
8 numerous occasions. (Id.) However, she also states earlier in the complaint that she  
9 was provided a BP-9 form to grieve a disciplinary matter. (Id.) Plaintiff alleges  
10 delays in the reply to her grievances. (Id.) Nevertheless, these delays are not  
11 sufficient grounds for her to avoid the PLRA's exhaustion requirement. As it is  
12 clear that Plaintiff has not "properly exhausted" her claims by pursuing all levels of  
13 administrative review available to her, and there is no applicable exception to the  
14 exhaustion requirement, dismissal without prejudice is appropriate. Ngo, 548 U.S.  
15 at 93.

16 **B. Request for Transfer**

17 Plaintiff seeks relief by way of a transfer to another prison facility "while  
18 awaiting for her habeas corpus execution to liberate the party from unconstitutional  
19 incarceration. (Compl. at 3.) Plaintiff also alleges that her transfer to the current  
20 facility was done to punish her for filing suits against officials. (Id. at 1.) However,  
21 this claim fails to state a claim under § 1983 because prisoners have no  
22 constitutional right to incarceration in a particular institution. See Olim v.  
23 Wakinekona, 461 U.S. 238, 244-48 (1983); Meachum, 427 U.S. at 224. A  
24 prisoner's liberty interests are sufficiently extinguished by his conviction that the  
25 state may generally confine or transfer him to any of its institutions, to prisons in  
26 another state or to federal prisons, without offending the Constitution. See Rizzo v.  
27 Dawson, 778 F.2d 527, 530 (9th Cir. 1985) (citing Meachum, 427 U.S. at 225)  
28 (intrastate prison transfer does not implicate Due Process Clause), and Olim, 461

1 U.S. at 244-48 (interstate prison transfer does not implicate Due Process Clause));  
2 see also Stewart v. McManus, 924 F.2d 138 (8th Cir. 1991) (no due process rights  
3 implicated in transfer from state to federal prison). Furthermore, a non-consensual  
4 transfer is not per se violative of either due process or equal protection rights, see  
5 Johnson v. Moore, 948 F.2d 517, 519 (9th Cir. 1991); Stinson v. Nelson, 525 F.2d  
6 728, 730 (9th Cir. 1975), and no due process protections such as notice or a hearing  
7 need be afforded before a prisoner is transferred, even if the transfer is for  
8 disciplinary reasons or to a considerably less favorable institution, see Montanye v.  
9 Haymes, 427 U.S. 236, 242 (1976); Johnson, 948 F.2d at 519; see also Coakley v.  
10 Murphy, 884 F.2d 1218, 1221 (9th Cir. 1989) (transfer from work release center  
11 back to prison does not implicate due process nor equal protection rights). “It is  
12 well settled that the decision where to house inmates is at the core of prison  
13 administrators' expertise.” McKune v. Lile, 536 U.S. 24, 39 (2002). Accordingly, to  
14 the extent that Plaintiff is claiming that her placement at the Dublin Camp is  
15 unconstitutional, the claim is DISMISSED for failure to state a claim upon which  
16 relief may be granted. See 28 U.S.C. § 1915A(b)(1),(2).

17  
18 **CONCLUSION**

19 For the foregoing reasons, this action is hereby DISMISSED, without  
20 prejudice to Plaintiff's refiling his claims after all available administrative remedies  
21 have been exhausted. Furthermore, Plaintiff's claim seeking a transfer to another  
22 facility is DISMISSED for failure to state a claim upon which relief may be granted.

23  
24 The Clerk shall terminate any pending motions and close the file.

25  
26 DATED: 6/11/2013

  
27 EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

LAN THI TRAN NGUYEN,  
Plaintiff,

Case Number: CV13-01012 EJD  
**CERTIFICATE OF SERVICE**

v.

RANDY TEWS, et al.,  
Defendants.

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 6/11/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Lan Thi Tran Nguyen 33836-112  
FEDERAL CORRECTIONAL INSTITUTION  
Inmate Mail/Parcels  
5701 8<sup>th</sup> Street Camp Parks  
DUBLIN, CA 94568

Dated: 6/11/2013

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk